



Consumer Federation of America



STATEMENT OF
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Before the

SENATE COMMERCE COMMITTEE,

Regarding

DIGITAL TELEVISION

On Behalf of

CONSUMER FEDERATION OF AMERICA¹
AND
CONSUMERS UNION²

March 1, 2001

¹ The Consumer Federation of America is the nation's largest consumer advocacy group, composed of over two hundred and forty state and local affiliates representing consumer, senior-citizen, low-income, labor, farm, public power and cooperative organizations, with more than fifty million individual members.

² Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports*, with approximately 4.5 million paid subscribers, regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

Mr. Chairman and Members of the Committee,

Today we are evaluating whether the broadcasters have been good stewards of a windfall they received over half a decade ago—free use of the digital television spectrum in exchange for a promise that they would rapidly roll out valuable new services to the public. We conclude that the broadcasters have not been good stewards. While they inch towards rollout of digital television, there are hundreds of innovators—operators with business models that could provide real competition across a wide range of communications and entertainment industries—who are being denied the chance to compete.

The public must be given something in return for the windfall that the broadcasters have received. We could take this opportunity to do one of three things: 1) compensate the public by setting aside some of spectrum for noncommercial use, and applying the proceeds of an auction of the rest of this spectrum band for a public interest communications trust fund, 2) enact mechanisms to ensure that the broadcasters roll out new digital services expediently, 3) open this spectrum to innovative, efficient new competitors who could eliminate monopoly leverage across the full range of communications industries.

However, instead of compensating the public, there are proposals on the table to make the public bear the costs of additional windfalls to the broadcasters—by requiring that new television sets include digital tuners, forcing any consumer wishing to buy a television to pay extra; by requiring cable companies to set aside more space for broadcasters; and by charging broadcasters an extremely low fee for use of spectrum to provide ancillary services. As I hope to make clear, these are out-of-pocket and opportunity costs that the public should not be forced to bear.

When the American broadcasting industry was given use of the digital broadcast spectrum at no charge over half a decade ago, the give-away was controversial for at least two reasons. First, we must remember that the right to use a channel of spectrum is a monopoly given to an individual where that individual and no one else has the right to convey information. In other words, the broadcasters got the right to communicate in these channels and the right to exclude others from communicating in these channels. And they got that at no cost. Of course, they did not "build" the spectrum—the airwaves existed long before the broadcasters. Consumer Federation of America and Consumers Union were dismayed that private corporations would be given exclusive rights to transmit in the digital television spectrum without paying for it, and without adequate financial incentives to rapidly put it to meaningful use.

The second reason this give-away was so controversial was because broadcast television is the dominant means of disseminating information in our democratic society, it has always borne special public interest obligations. As higher quality and interactivity intensify television's broad reach, impact and immediacy, giving it even greater power to influence, educate and communicate, CFA and CU believe that the public interest obligations it bears should expand, or at least traditional obligations should remain. At the time of the digital spectrum give away, no such obligations were imposed.

Unfortunately, when entrepreneurs receive valuable public assets for nothing, they do not have the normal economic incentives of competitive market players to meet consumer needs in an efficient manner. The effort that goes into exploiting assets generally reflects their underlying costs to the firm, not their value to the public. In the case of broadcast spectrum, which had a price tag of

zero, the broadcasters have not shown themselves to be worthy stewards of this valuable resource.

While corporations have sat on their assets, federal policy makers have also failed to move aggressively to define the nature of the public interest obligation that would be attached to this valuable windfall. Lacking the compulsion of investment at risk or public obligations, the broadcasters have moved very slowly in developing the programming that will fully exploit the value of this resource. We are confident that if these corporations had been forced to pay for spectrum, they would have moved much more quickly to exploit its value.

Five years of wasted opportunity imposes a heavy cost on the public, especially in cyberspace. The digital spectrum is a grossly underperforming asset that was mismanaged at the outset by federal policy makers and is being mismanaged by the corporations that control it. In the five years that the digital spectrum has been underutilized, the number of cellular telephone users in this country has increased about eight fold, from around 15 million to around 100 million. The number of households on the Internet has increased more than ten fold, from about 5 million to well over 50 million. In other words, the demand for open channels of communication is increasing rapidly while the broadcasters move at a snail's pace. In a proceeding currently before the Federal Communications Commission, the Commission is considering stripping educational users of their spectrum to accommodate the burgeoning demand for new wireless services. That educational users should be displaced while broadcasters sit on idle spectrum seems to be the reverse of what ought to happen.

Confronted with the industry's failure to take off, the Federal Communications Commission (FCC) has been searching for solutions. One very bad idea it is considering is to make the public,

which has already borne the opportunity cost of giving the spectrum away for free, pay for digital sets before there is adequate digital programming. The FCC is considering easing the way for broadcasters by forcing equipment manufacturers to install digital tuners, the cost of which will certainly drive up the price of new television sets.

While there is an inevitable “chicken and egg problem” with any new broadcast technology, the only possible point of the give-away was to compensate the broadcaster for their first mover, “chicken or egg” risk. Having been given the most important input, they were supposed to develop the programming, which would pull consumers to the new product. At the inception of television, the industry did not develop because millions of consumers went and bought expensive television sets before any programming was available. It developed because programming was available and it was something that consumers wanted. But right now the FCC is contemplating making the consumers ante up again, with no guarantees that the broadcasters will live up to their part of the new bargain. We should not tell consumers “if you come, we will build it.” Instead, if the broadcasters build what they promised, consumers will come.

It is time to revisit past policy mistakes regarding digital television. The public owns the spectrum and it should get full and immediate value out of it in four ways.

- (1) Licenses should be auctioned off to the highest bidder with the freedom to use the spectrum for a limited time for the use the highest bidder values most.
- (2) Proceeds from those auctions should be placed in a trust fund used solely to develop civic, noncommercial programming, based on public interest and culturally relevant content, locally developed.

(3) Part of the spectrum should be set aside for the airing of that civic, noncommercial programming, including a set aside for candidates for public office to air their views prior to elections.

(4) Development of the spectrum should ensure universal availability of the digital media.

Let me stress that we believe this is exactly the right time to expand the public interest obligations of all the digital media, and broadcasting is exactly the right industry to start with because it so clearly relies on the use of a public asset. As communications, computers and entertainment converge in the digital media economy, we frequently hear the claim by the companies which dominate these component industries that public interest obligations must be abandoned. Each of the industry segments that is converging points to a public interest obligation that it bears, which its competitors do not bear, and claims that it must be excused from that obligation. This race to the bottom obliterates all compensation for public assets and public interest obligations.

We take the opposite view. Each of the industries relies on a public resource in some fashion, spectrum or right of way, and is imbued with the public interest. Convergence should improve performance in all respects, including raising the level of civic and political discourse, not lowering it. We should have a highest common denominator in which the converged media takes on the public interest obligations of each of the component industries and perhaps even adds some to reflect the increased power and impact of the new digital medium. It should come early in the process, before commercial applications fill up the expanded digital product space and place even greater pressure on the educational, civic and culturally uplifting programming that is not as commercially attractive. In short, we support efforts to extract full value from public resources and

we think that a part of that value must be realized through payment for use of the digital spectrum and through fulfillment of expanded public interest obligations.

We are certain that the broadcasters will moan and groan about how much it costs them to add other assets necessary to use this spectrum, but we are skeptical about these claims. The most that this could mean, even if it were true, is that policymakers have allocated the spectrum to the wrong uses, because there appear to be many other entities that are more than willing to pay for spectrum to bring digital products to the market.

The broadcasters had their chance and it looks like they blew it. It is time to subject this valuable public resource to a market test. It is time to rent the digital spectrum to the highest bidder (rent, not sell, for a time frame sufficiently long to allow the reasonable opportunity to recover investment costs) and apply the proceeds directly to meaningful public purposes that are more commensurate with the full value of this new rich, powerful and influential means of communications, entertainment and education.